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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,466	04/19/2001	Dominique Bonjour	28944/37279	2087
8968	7590	05/10/2005	EXAMINER	
GARDNER CARTON & DOUGLAS LLP ATTN: PATENT DOCKET DEPT. 191 N. WACKER DRIVE, SUITE 3700 CHICAGO, IL 60606			PEZZLO, JOHN	
			ART UNIT	PAPER NUMBER
			2662	

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/838,466

Applicant(s)

BONJOUR ET AL

Examiner

John Pezzlo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

I. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naito et al. (0511671 A2) hereinafter Naito in view of Kloth (US 6,598,034 B1).

1. Regarding claims 1 and 8 – Naito discloses processing first data units originating from the external network facility (ATM network) so as to recover first packets transported by the first data units, refer to Figure 2 and the abstract and page 4 lines 39 to 50.

Naito does not expressly disclose "test generating traffic carried by second packets of said higher layer protocol". Naito discloses generating ATM test cells carried by second packets, refer to Figures 3, 6, and 8 and page 4 lines 39 to 58 and page 5 lines 1 to 10 and page 5 lines 38 to 58.

Kloth discloses routing IP packets over an ATM network, which is carry packets of a higher layer protocol, refer to Figure 14 and column 14 lines 39 to 55.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to utilize IP packets carried by the ATM cells. The suggestion/motivation for doing so would have been that Naito discloses a Pay Load Type field in the header and this field could be tested by inserting the IP test packets and monitoring the packets and the field for compliance. The benefit being that the test system would be tested in a similar manner as the system is used in real life situations making the test more realistic which would result in a more thorough test.

Naito discloses multiplexing the first and second packets so as to form a stream of multiplexed packets, refer to Figures 3 and 6 and page 4 lines 39 to 58 and page 5 lines 38 to 52.

Naito discloses converting the stream of multiplexed packets into second data units according to said point-to-point transmission interface format (ATM format), refer to Figures 3 and 6 and page 4 lines 39 to 58 and page 5 lines 38 to 52.

Naito discloses transmitting the second data units to the switching system, refer to Figures 4, 5 and 8 and page 5 lines 10 to 34 and page 5 lines 53 to 58 and page 6 lines 1 to 21.

2. Regarding claims 2 and 9 – Naito discloses wherein the generation of the test traffic comprises producing a stream of data units according to an interface format (specific PN sequence of bits) transporting said second packets (ATM cell format), refer to Figures 3 and 6 and page 4 lines 39 to 58 and page 5 lines 38 to 52 and processing said stream of data units so as to recover the second packets (ATM cell format), refer to Figures 4, 5 and 8 and page 5 lines 10 to 34 and page 5 lines 53 to 58 and page 6 lines 1 to 21.

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3. Regarding claims 3 and 10 – Naito discloses wherein said specified interface format (PN test sequence of bits) is distinct from said point-to-point transmission interface format (ATM cell format), refer to Figures 4, 5 and 8 and page 5 lines 10 to 34 and page 5 lines 53 to 58 and page 6 lines 1 to 21.

4. Regarding claim 4 – Naito discloses setting states of the switching system by means of the first packets by way of the external network facility, refer to the abstract and Figure 2 and page 39 to 55 wherein Naito discloses the ATM cross-connect is set-up and then a test signal is inputted after the states (path through the ATM cross-connect) have been set by the external network facility, refer to Figure 5 and page 5 lines 22 to 35.

5. Regarding claim 5 – Naito discloses wherein the switching system is linked to several external network facilities and states of the switching system are set by way of at least one of said external network facilities, refer to the abstract and Figure 2 and page 39 to 55 wherein Naito discloses the ATM cross-connect is set-up and then a test signal is inputted after the states (path through the ATM cross-connect) have been set by the external network facility, refer to Figure 5 and page 5 lines 22 to 35.

6. Regarding claims 6 and 12 – Naito does not expressly disclose said higher layer protocol is an IP protocol. Naito discloses generating ATM test cells carried by second packets, refer to Figures 3, 6, and 8 and page 4 lines 39 to 58 and page 5 lines 1 to 10 and page 5 lines 38 to 58.

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Kloth discloses routing IP packets over an ATM network, which is carry packets of a higher layer protocol, refer to Figure 14 and column 14 lines 39 to 55.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to utilize IP packets carried by the ATM cells. The suggestion/motivation for doing so would have been that Naito discloses a Pay Load Type field in the header and this field could be tested by inserting the IP test packets and monitoring the packets and the field for compliance. The benefit being that the test system would be tested in a similar manner as the system is used in real life situations making the test more realistic which would result in a more thorough test.

7. Regarding claim 7 – Naito discloses performing an arbitration between the first and second packets before multiplexing, Naito discloses a selector, refer to Figures 3 and 6, which arbitrate between multiplexing a test cell or a normal data cell, refer to page 4 lines 55 to 58 and page 5 lines 1 to 10 and page 5 lines 38 to 52.

8. Regarding claim 11 – Naito discloses incorporated into a traffic source generating the second packets carrying said additional traffic, refer to the abstract and Figures 3, 5, and 6 and page 4 line 55 to page 5 line 52.

Response to Arguments

Applicant's arguments filed 7 March 2005 have been fully considered but they are not persuasive. Applicants argue on page 5 of the response that "Naito never describes nor suggests

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that data units transferred from another node are processed so as to recover first packets". The examiner respectfully disagrees. Referring to Figure 2 and page 4 lines 39 to 50, Naito discloses receiving ATM cells, the examiner has mapped ATM cells to the data units and packets of a higher level are segmented into ATM cells over transmission over the ATM network, at the destination the ATM cells are recombined into the original packet, this the basic concept on which any ATM network operates.

Applicants argue on page 5 of the response that "Naito does not disclose, teach or suggest the multiplexing of the first data packet with second data packets". The examiner respectfully disagrees. Referring to Figures 2 and 6 and page 4 line 39 to page 5 10 and page 5 lines 38 to 52, Naito discloses multiplexing test cells with other ATM cells in the ATM cell stream.

Applicants argue on pages 5 and 6 of the response that "Naito does not disclose a method to handle proprietary protocols". The examiner could not find this language in any of the claims, if the claims are amended to include this limitation, the examiner will consider this feature.

Applicants argue on page 6 of the response that "Kloth does not discloses, teach or suggest that first packets are recovered from the first data units, which originate from an external network facility". The examiner respectfully disagrees. Referring to Figure 14 and column 2 line 27 to column 3 line 40 and column 14 lines 39 to 55. Kloth discloses a switch/router which receives IP packets from an external network facility and converts the IP packets to ATM cells and routes the ATM cells over an ATM network and at the destination switch/router recovering the IP packets (first packets) from the ATM cells (first data units).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (571) 272-3090. The examiner can normally be reached on Monday to Friday from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Any response to this action should be mailed to:

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Commissioner of Patents and Trademarks

Washington, D.C.

or faxed to:

(703) 872-9306

For informal or draft communications, please label ?PROPOSED≡ or ?DRAFT≡

Hand delivered responses should be brought to:

Jefferson Building

500 Dulany Street

Alexandria, VA.

John Pezzlo

5 May 2005

A handwritten signature in black ink, appearing to read 'JPezlo', with a stylized flourish at the end.

**JOHN PEZZLO
PRIMARY EXAMINER**